MEMORANDUM DECISION

IN THE
Court of Appeals of Indiana

Daniel James Orshonsky,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff

May 30, 2025

Court of Appeals Case No.
24A-CR-2755

Appeal from the Porter Superior Court

The Honorable Michael Bergerson, Senior Judge

Trial Court Cause No.
64D05-2001-F1-759

Memorandum Decision by Judge May
Judges Weissmann and Scheele concur.

May, Judge.

[1] Daniel James Orshonsky appeals his sentence following his convictions of Level 1 felony child molesting[1] and Class A misdemeanor intimidation.[2] Orshonsky raises one issue on appeal, whether his aggregate thirty-six-year sentence is inappropriate given the nature of his offenses and his character. We affirm.

Facts and Procedural History

[2] We described the facts supporting Orshonsky's conviction in a prior appeal:

> On October 26, 2012, Orshonsky and Kristen Decker-Vanderwoude ("Mother") were married. Mother has three daughters and one son—M.D., K.D., C.D., and S.D. ("the Children") - from a previous marriage. C.D. was born on August 27, 2010. In 2013, Orshonsky and Mother were having marital difficulties and began participating in marriage counseling with the head pastor at their church and the pastor's wife. In September 2013, Orshonsky, Mother, and the Children moved into a new house. At that time, Mother worked part-time cleaning houses, and C.D. had not yet started Kindergarten. Mother would occasionally take C.D. or her other children with her to clean a house. During the days that she could not take the Children with her, Orshonsky would watch the Children while Mother cleaned.

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[1] Ind. Code § 35-42-4-3 (2014).

[2] Ind. Code § 35-45-2-1 (2014).

Sometime in 2014, while having a conversation about Orshonsky, then three-year-old C.D. said to Mother, "I no like daddy days[ ] because Daddy sticks his wiener in my mouth." Tr. Vol. 3 p. 143. Mother confronted Orshonsky about C.D.'s comment, and his reaction was "[i]mmediate anger and defense and shock." *Id.* Mother wanted to report C.D.'s comment to the head pastor and his wife, but Orshonsky did not want to say anything because he knew that they would "immediately have to report it elsewhere." *Id.* at 144. Ultimately, Mother did not tell anyone about C.D.'s statement.

On May 25, 2016, Orshonsky adopted the Children. However, the relationship between Orshonsky, Mother, and the Children deteriorated due to Orshonsky's mistreatment of Mother "and [his] verbally, emotionally . . . [h]arsh punishment [of the Children] that [Mother] didn't necessarily agree with." *Id.* at 149-50. Orshonsky was also physically abusive to the Children. One time, the police were called after Orshonsky "hit [K.D.] across the face and shoved her into the stove." *Id.* at 155. Mother considered divorce, but based upon her religious beliefs that she could only seek a divorce under biblical grounds, such as abandonment or adultery, Mother remained married to Orshonsky.

In June 2019, then eight-year-old C.D. exhibited behavior that worried Mother, so she "tried to get to the bottom of where it was coming from" by asking her some questions. *Id.* at 156. C.D. told Mother that "on daddy days" she "remember[ed] Dad sticking his wiener in [her] mouth." *Id.* at 158. Mother did not report C.D.'s disclosure to anyone, claiming she did not know what to do with that information. In September 2019, Mother and Orshonsky were in an argument that ended with Orshonsky eventually leaving the house after telling Mother that "he was going to take all the money out of [their] bank account and [that Mother and the Children would] never see him again." *Id.* at 160. The Children were present while Orshonsky and Mother

> argued. Mother was distraught, and M.D. and K.D. checked on Mother. While talking to M.D. and K.D., Mother mentioned that she thought C.D. was sexually abused by Orshonsky, and M.D. and K.D. disclosed that Orshonsky had molested them too. The following day Mother told two family members that C.D., M.D., and K.D. had been molested by Orshonsky and that they needed help. Eventually, Mother, K.D., and one of the family members reported the Children's allegations to the Porter County Sheriff's Department. Detective Darrell Hobgood interviewed C.D., M.D., and K.D., and C.D. told him that Orshonsky "threatened to '[d]o it worse' if she ever told anyone" about the child molesting. Appellant's App. Vol. II p. 22. The Indiana Department of Child Services became involved.
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> On October 4, 2019, a forensic interview of the Children was conducted by a forensic interviewer at Dunebrook, and C.D., M.D., and K.D. all disclosed that Orshonsky molested them. On January 27, 2020, the State charged Orshonsky with: Count I child molesting as a Class A felony; Count II, child molesting as a Class A felony; Count III, child molesting as a Class A felony; Count IV, child molesting as a Level 1 felony; Count V, child molesting as a Class C felony; Count VI, child molesting as a Class C felony; and Count VII, intimidation as a Class A misdemeanor.

Orshonsky v. State, 23A-CR-982, 2024 WL 2747632 at *1 -*2 (Ind. Ct. App. May 29, 2024) (internal footnote omitted) (brackets in original), *reh'g denied*, *trans. denied*. The trial court held a jury trial on the charges in February 2023. *Id*. at *2. The trial court had to take a recess during C.D.'s testimony to give C.D. time to gather herself, but C.D. was able to complete her testimony and describe Orshonsky's abuse. *Id*. at *2-*3. The jury returned verdicts finding Orshonsky guilty of three charges related to C.D. – Class A felony child

molesting,[3] Level 1 felony child molesting, and Class A misdemeanor intimidation. *Id*. at *3. The jury could not reach a verdict on the remaining charges. *Id*. To avoid double jeopardy concerns, the trial court entered convictions against Orshonsky on only the charges of Level 1 felony child molesting and Class A misdemeanor intimidation. *Id*. The trial court sentenced Orshonsky to a term of forty-five years for his Level 1 felony child molesting conviction and one year for his Class A misdemeanor intimidation conviction. *Id*. The trial court ordered Orshonsky to serve the sentences consecutively for an aggregate term of forty-six years. *Id*. On appeal, we held the trial court erroneously concluded that a sentencing enhancement applied to Orshonsky's Level 1 felony child molesting conviction, and we remanded for the trial court to re-sentence Orshonsky. *Id*. at *9-*10.

[3] At the sentencing hearing on remand, the trial court took judicial notice of the prior proceedings. The State noted C.D. was under the age of twelve when Orshonsky molested her, Orshonsky abused his position of trust as her adopted father, and "the repeated and ongoing nature" of Orshonsky's abuse. (Tr. Vol. 2 at 26.) The State asked the trial court to impose the maximum possible aggregate sentence of forty-one years for Orshonsky's crimes. Orhonsky asked the trial court to consider his lack of criminal history and the absence of any disciplinary violations during his twenty months of incarceration in the Porter

[3] Ind. Code § 35-42-4-3 (2007).

County Jail to be mitigating factors. His attorney also argued: "My recollection is that it was difficult for CD during testimony. That said, I don't remember it being so overly difficult that it would differ in [sic] most other child molest cases that I have seen transpire over my career." (*Id*. at 29-30.) Orshonsky asked the trial court to sentence him to a term of thirty years with respect to the Level 1 felony child molesting conviction and one year with respect to his Class A misdemeanor intimidation conviction.

[4] When imposing the sentence, the trial court explained:

> The Court finds that the only mitigating circumstances [sic] is that the Defendant has no prior criminal history. However, the Court believes the Defendant to be a heartless and gutless pedophile. And the Court finds the following aggravating circumstances exist: One, that the victim of the offense was less than 12 years of age at the time of the events. Two, that the Defendant was in a position of having the care and custody and control of the victim, and took advantage of said position of trust. Three, the repeated and ongoing nature of these crimes committed by the Defendant against CD demonstrate the depths and scope of the Defendant's depravity.
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> The Court finds that the aggravating circumstances far outweigh the mitigating circumstances.

(*Id*. at 35-36.) The trial court sentenced Orshonsky to thirty-five years for his Level 1 felony child molesting conviction and one year for his Class A misdemeanor intimidation conviction. The trial court ordered Orshonsky to serve the sentences consecutively, for an aggregate term of thirty-six years.

Discussion and Decision

[5] Orshonsky contends his sentence is inappropriate given the nature of his offense and his character, and he asks us to revise his Level 1 felony sentence downward "to a sentence that is no greater than an advisory, 30-year sentence." (Appellant's Br. at 13.) However, "[w]hen gauging inappropriateness under Appellate Rule 7(B), we 'focus on the forest—the aggregate sentence—rather than the trees—consecutive or concurrent, number of counts, or length of the sentence on any individual count.'" *Norton v. State*, 235 N.E.3d 1285, 1290-91 (Ind. Ct. App. 2024) (quoting *Brown v. State*, 10 N.E.3d 1, 8 (Ind. 2014)). Pursuant to Indiana Appellate Rule 7(B), we may revise a sentence "if, after due consideration of the trial court's decision, [we find] that the sentence is inappropriate in light of the nature of the offense and the character of the offender." Our determination "turns on our sense of the culpability of the defendant, the severity of the crime, the damage done to others, and myriad other factors that come to light in a given case." *Cardwell v. State*, 895 N.E.2d 1219, 1224 (Ind. 2008).

> Our review is deferential to the trial court's decision, and our goal is to determine whether the appellant's sentence is inappropriate, not whether some other sentence would be more appropriate. We consider not only the aggravators and mitigators found by the trial court, but also any other factors appearing in the record. The appellant bears the burden of demonstrating his sentence [is] inappropriate.

George v. State, 141 N.E.3d 68, 73-74 (Ind. Ct. App. 2020) (internal citations omitted), *trans. denied*. Our review is "holistic" and takes into consideration "the whole picture before us." *Lane v. State*, 232 N.E.3d 119, 127 (Ind. 2024). A defendant need not prove a sentence is inappropriate given both the defendant's character and offense, but "to the extent the evidence on one prong militates against relief, a claim based on the other prong must be all the stronger to justify relief." *Id*.

[6] "When considering the nature of the offense, we first look to the advisory sentence for the crime." *McHenry v. State*, 152 N.E.3d 41, 46 (Ind. Ct. App. 2020). When a sentence deviates from the advisory sentence, "we consider whether there is anything more or less egregious about the offense as committed by the defendant that distinguishes it from the typical offense accounted for by our legislature when it set the advisory sentence." *Madden v. State*, 162 N.E.3d 549, 564 (Ind. Ct. App. 2021). With respect to Orshonsky's Level 1 felony child molesting conviction, he faced a sentence of between twenty and forty years, with an advisory term of thirty years. *See Orshonsky*, ,2024 WL 2747632 at *9 -*10 (holding Orshonsky eligible for sentence between twenty and forty years because enhancement which would have increased his potential maximum sentence to fifty years did not apply given the jury did not find victim was under twelve years old); Ind. Code § 35-50-2-4(b) (2014). In addition, the maximum sentence a person convicted of a Class A misdemeanor can receive is one year. Ind. Code § 35-50-3-2 (1977). Thus, while Orshonsky's aggregate

thirty-six-year sentence reflects an above-advisory term, his aggregate sentence is below the maximum he could have received for his crimes.

[7] Orshonsky argues that "while the allegations against [him] were extremely serious, they were not appreciably worse than other Level 1 [felony] child molesting allegations." (Appellant's Br. at 13.) We disagree. Orshonsky abused his position of trust as C.D.'s stepfather and caregiver to subject her to repeated acts of sexual abuse. He also threatened C.D. with more abuse if she told anyone about it. As the trial court observed, Orshonsky's "acts of depravity occurred many times over the years until CD could no longer keep this a secret." (Tr. Vol. 2 at 35.) Orshonsky's offense was also more egregious than a typical child molesting offense because he sometimes used physical force to compel C.D. to perform oral sex on him. There is nothing about the nature of Orshonsky's offenses that merits a downward revision of his sentence. *See*, *e.g.*, *Sorgdrager v. State*, 208 N.E.3d 646, 654 (Ind. Ct. App. 2023) (holding nature of defendant's child molesting offenses did not merit downward revision of his sentence when he abused his position of trust as victim's stepfather), *trans. denied*.

[8] Orshonsky points to his lack of criminal history to argue that his sentence is inappropriate given his character. However, Orshonsky physically abused his stepchildren, and while he was only convicted of one count of child molestation, C.D. testified that he abused her multiple times. These facts make his lack of a formal criminal record less compelling. *See Chastain v. State*, 165 N.E.3d 589, 601 (Ind. Ct. App. 2021) (holding defendant's maximum sentence

for child molesting was not inappropriate even though he had no formal criminal record because of uncharged allegations of criminal conduct), *trans. denied*. Orshonsky also notes that he was employed prior to his incarceration, but as the State explains, "doing something that most law-abiding people do is not a sign of sterling character." (Appellee's Br. at 14); *see also Newsome v. State*, 797 N.E.2d 293, 301 (Ind. Ct. App. 2003) ("Many people are gainfully employed such that this would not require the trial court to note it as a mitigating factor or afford it the same weight as Newsome proposes."), *trans. denied*. Orshonsky's character also does not merit a downward revision of his sentence. *See*, *e.g.*, *Chastain*, 165 N.E.2d at 601 (holding defendant's character did not merit a lesser sentence even though he was gainfully employed and lacked a formal criminal history). Therefore, we affirm Orshonsky's sentence.

Conclusion

[9] Orshonsky's aggregate thirty-six-year sentence is not inappropriate given the nature of his offenses and his character. Accordingly, we affirm the trial court.

[10] Affirmed.

Weissmann, J., and Scheele, J., concur.

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